

is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure. In the absence of an agreement in writing among all participants, this procedure may be applied by the Board, in its discretion, either on the motion of a party or by the Copyright Royalty Board *sua sponte*. A party requesting use of paper proceedings, in the absence of agreement among the other participants, should include in the motion a showing that the use of paper proceedings in the particular case would meet any due process or other legal requirements.

(2) *Course of procedure.* Paper proceedings will be decided on the basis of the filing of the written direct statement by the participant (or participant group filing a joint petition), the response by any opposing participant, and one optional reply by a participant who has filed a written direct statement. Before a decision becomes final in a case utilizing paper proceedings, the Copyright Royalty Board will offer the participants the opportunity to comment on the decision.

§ 351.4 Written direct statements.

(a) *Required filing; deadline.* All parties who have filed a petition to participate in the hearing must file a written direct statement. The deadline for the filing of the written direct statement will be specified by the Copyright Royalty Board, not earlier than 4 months, nor later than 5 months, after the end of the voluntary negotiation period set forth in § 351.2.

(b) *Content required—(1) Testimony.* The written direct statement shall include all testimony, including each witness's background and qualifications, along with all the exhibits to be presented in the direct statement.

(2) *Designated testimony.* Each participating party may designate a portion of past records, including records of the Copyright Royalty Tribunal or Copyright Arbitration Royalty Panels, that it wants included in its direct statement. If a party intends to rely on any part of the testimony of a witness in a prior proceeding, the complete testimony of that witness (*i.e.*, direct, cross and redirect examination) must be des-

ignated. The party submitting such designated testimony shall include a copy of that testimony with the written direct statement.

(3) *Claim.* In the case of a royalty distribution proceeding, each party must state in the written direct statement its percentage or dollar claim to the fund. In the case of a rate (or rates) proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to, and including, the filing of the proposed findings of fact and conclusions of law.

(4) *Material questions.* Under a separate heading, the written direct statement shall set forth any “material question of substantive law” that is expected to arise in the course of the proceeding and might warrant certification to the Register of Copyrights under 17 U.S.C. 802(f). Cf., 37 CFR Part 354.

(c) *Amended written direct statements.* A participant in a proceeding may amend a written direct statement based on new information received during the discovery process, within 15 days after the end of the discovery period. An amended written direct statement must explain how it differs from the written direct statement it will amend and must demonstrate that the amendment is based on new information received during the discovery process. The participant amending its written direct statement may file either the amended portions of the written direct statement or submit complete new copies at its option.

§ 351.5 Discovery in royalty rate proceedings.

(a) *Schedule.* Following the submission to the Copyright Royalty Board of written direct statements by the participants in a royalty rate proceeding, and after conferring with the participants, the Copyright Royalty Board will issue a discovery schedule. Discovery shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Board in connection with the resolution of motions, orders, and disputes pending at the end of such period. The discovery schedule will include a date for the

post-discovery settlement conference addressed in § 351.7.

(b) *Document production.* A participant in a royalty rate proceeding may request of an opposing participant non-privileged documents that are directly related to the written direct statement or written rebuttal statement of that participant. Any objection to such a request shall be resolved by a motion or request to compel production. The motion must show how the disputed document or documents would actually be relevant to the moving party's case and that the information sought is not readily available to the moving participant in a form or format that would be substantially less burdensome to produce. The motion must also include a statement that the parties had conferred and were unable to resolve the matter.

(c) *Depositions and interrogatories.* In a proceeding to determine royalty rates, the participants entitled to receive royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories. Similarly, the participants obligated to pay royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories.

§ 351.6 Discovery in distribution proceedings.

In distribution proceedings, the Board shall designate a 45-day period following the filing of written direct and rebuttal statements within which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

§ 351.7 Settlement conference.

A post-discovery settlement conference will be held among the participants, within 21-days after the close of discovery, outside of the presence of the Copyright Royalty Board. Immediately after this conference the participants shall file with the Copyright Royalty Board a Joint Settlement Conference Report indicating the extent to which the participants have reached a settlement.

§ 351.8 Pre-hearing conference.

In the absence of a complete settlement in a proceeding not subject to the abbreviated procedures set forth in §§ 351.3(b) and (c), a hearing will be scheduled expeditiously so as to allow the Board to conduct hearings and issue its final determination in the proceeding within the time allowed by the Copyright Act. Prior to the hearing, the Board may conduct a prehearing conference to assist in setting the order of presentation of evidence and the appearance of witnesses at the hearing.

§ 351.9 Conduct of hearings.

(a) *By panels.* Hearings will be conducted by all Copyright Royalty Judges sitting as a panel.

(b) *Role of Chief Judge.* The Chief Copyright Royalty Judge may preside over such collateral and administrative proceedings, and over proceedings under section 803(b)(1) through (5) of the Copyright Act, as the Chief Judge considers appropriate. Subject to the vote of the Copyright Royalty Judges, the Chief Judge shall have the responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the Board's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even number of Judges sitting at the hearing, with the exception of a hearing pursuant to 17 U.S.C. 803(a)(2), it takes a majority vote to grant a motion or sustain an objection. A tie vote will result in the denial of a motion or the overruling of the objection;

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial; and

(5) Announcing the schedule of subsequent proceedings.

(c) *Opening statements.* In each distribution or rate proceeding, each party may present its opening statement summarizing its written direct statement.